

NORTH CAROLINA)
)
 _____ COUNTY) **AGREEMENT TO ARBITRATE AND
AGREEMENT FOR ARBITRATION
PROCEDURES**

THIS AGREEMENT TO ARBITRATE AND AGREEMENT FOR ARBITRATION PROCEDURES, hereinafter referred to as "agreement," is made on this the ___ day of _____, 20__, by and between _____ and _____;

WITNESSETH:

THAT WHEREAS, the parties agree to submit certain matters in controversy to arbitration for a final determination pursuant to N.C.G.S. § 50-41, *et seq.*;

WHEREAS, the arbitration is to be conducted subject to the conditions and provisions set forth herein.

NOW, THEREFORE, said parties for and in consideration of the acts and things herein respectively agreed by them and to be done and performed, do mutually agree, each with the other as follows:

1. **Issues.** The following issues shall be submitted to arbitration:

- a. _____
- b. _____
- c. _____

2. **North Carolina Canons of Ethics for Arbitrators.** The North Carolina Canons of Ethics for Arbitrators shall apply to this arbitration proceeding.

3. **Date, Time and Place of Arbitration Hearing.**

a. **Date, Time and Place.** The arbitration hearings shall be held at the law offices of _____ located at _____, _____, North Carolina or at any other location as the arbitrator may designate. The arbitrator shall set the date and time for each mediation hearing. The arbitrator shall send a written notice of hearing at least 20 days before the hearing. Attendance at a hearing waives notice of the hearing.

b. **Change of Location.** If a party requests in writing that an arbitration hearing be held at another specific location because of serious inconvenience of a party or parties or of a witness or witnesses such that justice in the arbitration cannot be had, the arbitrator may, after receiving the request and a written response from the

other party filed within 30 days after receiving the request, determine the other place requested by a party, or a neutral site or sites. The arbitrator's decision shall be final and binding.

4. **Arbitrators.** _____ shall serve as the single arbitrator.
5. **Arbitrator's Fees and Expenses.** The arbitrator's fees and charges have been set out in a separate agreement signed by the parties and the arbitrator.
6. **Initiation of Arbitration.** This arbitration shall be initiated by the filing of this fully executed agreement with the designated arbitrator.
7. **Interim Relief and Interim Measures.**
 - a. **Relief from Arbitrator.** A party shall seek interim measures as described in subsection (b) of this section from the arbitrator. A party has no right to seek interim relief from a court, except that a party may request from the court enforcement of the arbitrator's order granting interim measures and review or modification of any interim measures governing child support or child custody.
 - b. **Specific Interim Relief Permitted.** The arbitrator may grant, pursuant to subsection (a) of this section, any of the following:
 - i. An order of attachment or garnishment;
 - ii. A temporary restraining order or preliminary injunction;
 - iii. An order for claim and delivery;
 - iv. Appointment of a receiver;
 - v. Delivery of money or other property into court;
 - vi. Notice of *lis pendens*;
 - vii. Any relief permitted by N.C.G.S. §§ 7B-502, 7B-1902, 50-13.5(d), 50-16.2A, 50-20(h), 50-20(I), or 50-20(i1); or Chapter 50A, Chapter 50B, or Chapter 52C of the General Statutes; or
 - viii. Any other order necessary to ensure preservation or availability of assets or documents, the destruction or absence of which would likely prejudice the conduct or effectiveness of the arbitration.
 - c. **Preservation of Subject Matter.** The arbitrator may, at a party's request, order any party to take such interim measures of protection as the arbitrator considers necessary in respect of the subject matter of the dispute, including interim measures analogous to interim relief specified in subsection (b) of this section. The arbitrator may require any party to provide appropriate security, including security for costs as provided in N.C.G.S. § 50-51 in connection with interim measures.
 - d. **Agreement Controls.** A party seeking interim measures or any other proceeding before the arbitrator shall proceed in accordance with this agreement. The

arbitrator, after consulting with the parties' attorneys, shall notify the parties of the date, time and place of the hearing.

8. Administrative Conference, Preliminary Hearing, Mediation Conference.

- a. Administrative Conference.** An administrative conference with the arbitrator and the parties and counsel may be scheduled to expedite arbitration proceedings. This conference may be held by conference telephone call or similar means.
- b. Preliminary Hearing.** The arbitrator may schedule a preliminary hearing with parties and their counsel to specify issues to be resolved, to stipulate as to uncontested facts, or to consider other matters to expedite the arbitration proceedings. A preliminary hearing may be conducted by conference telephone call or similar means.
- c. Scheduling.** Consistent with the expedited nature of arbitration, at an administrative conference or preliminary hearing the arbitrator may establish (i) the extent of and schedule for production of relevant documents and other information, (ii) the scheduling of depositions, (iii) the scheduling of third-party discovery, (iv) the scheduling of other discovery, (v) the identification of witnesses to be called, and (vi) a schedule for further hearings to resolve the dispute.
- d. Financial Disclosures.** In the arbitrator's discretion each party shall exchange and file with the arbitrator, before the administrative conference or other hearing as the arbitrator directs, a full and complete financial statement on forms specified by the arbitrator. Each party shall update these statements as necessary, unless the parties otherwise agree and the arbitrator approves. The arbitrator may set the schedule for the filing and exchange of these statements and may require production and exchange of any other such information as the arbitrator deems necessary. Corruption, fraud, misconduct or submission of false or misleading financial information, documents or evidence by a party shall be grounds for imposing sanctions by the arbitrator or the court, and for vacating an award by the arbitrator.
- e. Mediation.** The arbitrator may arrange a mediation conference under principles stated in the North Carolina District Court and Superior Court mediation statutes and rules. Unless the parties otherwise agree, the mediator may not be an arbitrator in the present case.

- 9. Record of Arbitration.** _____ shall make arrangements with a court reporting service to have all of the arbitration proceedings transcribed. The parties shall equally share the costs for the services of the court reporting service and for obtaining copies of the stenographic record. This transcription shall constitute the official record of these proceedings and shall be made available to the arbitrator and to each of the parties.

10. Attendance at Hearings. The arbitrator, the parties and their counsel shall maintain the privacy of the hearings and other proceedings (*e.g.*, discovery incident to the arbitration) unless the law provides otherwise or unless the parties agree in writing. Any person having a direct material interest in the arbitration may attend hearings. The arbitrator shall otherwise have the power to require exclusion of any witness, other than a party or other essential person, during any other witness's testimony. The arbitrator has discretion to determine the propriety of attendance of any other person.

11. Oaths. Before proceeding with the first hearing, the arbitrator may take an oath or affirmation of office. The arbitrator may require witnesses to testify under oath or affirmation administered by the arbitrator. The arbitrator's oath or affirmation shall state names of parties to the arbitration agreement and shall be substantially in this form:

“*[Name]*, being duly sworn or affirmed, hereby accepts this appointment, attests that the biography or other information submitted by the arbitrator to the parties [and the court] is accurate and complete; will faithfully and fairly hear and decide matters in controversy between the above-named parties in accordance with their arbitration agreement and the North Carolina Canons of Ethics for Arbitrators and the rules incorporated into the parties' arbitration agreement; and will make an award according to the best of the arbitrator's understanding.”

The oath or affirmation shall be signed and dated by the arbitrator, who shall send copies to the parties and the court.

12. Postponements. The arbitrator for good cause shown, may postpone any hearing upon a party's written request or upon the arbitrator's own initiative. The arbitrator shall grant a postponement upon written request of all parties. The arbitrator may impose costs incurred by parties or the arbitrator in connection with a postponement.

13. Order of Proceedings, Communication with Arbitrator.

a. Opening of Hearing. A hearing shall be opened by the filing of the oath of the arbitrator, where required; by recording the date, time and place of the hearing, and the presence of the arbitrator, the parties, and their counsel, if any; and by the arbitrator's receipt of statement of the claim and answering statement, including any counterclaim, if any.

b. Opening Statements. At the beginning of the hearing the arbitrator may ask for statements clarifying the issues involved. In some cases, part or all of these statements may have been submitted at the preliminary hearing conducted by the arbitrator.

c. Sequence of Presentation of Evidence. The complaining party shall then present evidence to support that party's claim. The defending party shall then present evidence supporting its defense and counterclaim, if any, after which the complaining party may present evidence supporting its response to the

counterclaim. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for presentation of material and relevant evidence.

- d. **Exhibits.** The arbitrator may receive exhibits in evidence when offered by a party.
- e. **Witnesses and Exhibits into Record.** All witnesses' names and addresses and a description of exhibits in the order received shall be made a part of the record.
- f. **No *Ex Parte* Communications.** There shall be no direct communication between parties and a neutral arbitrator other than at oral hearings, unless the parties and the arbitrator agree otherwise.

14. Witnesses; Subpoenas; Depositions; Court Assistance.

- a. **Subpoenas.** The arbitrator has the power to administer oaths and may issue subpoenas for attendance of witnesses and for production of books, records, documents and other evidence. Subpoenas issued by the arbitrator shall be served and, upon application to the court by a party or the arbitrator, enforced in the manner provided by law for service and enforcement of subpoenas in a civil action.
- b. **Depositions.** On the application of a party and for use as evidence, the arbitrator may permit depositions to be taken, in the manner and upon the terms the arbitrator designates.
- c. **Authority to Compel.** All provisions of law compelling a person under subpoena to testify are applicable.
- d. **Court Assistance.** The arbitrator or a party with the approval of the arbitrator may request assistance from the court in obtaining discovery and taking evidence, in which event the Rules of Civil Procedure under Chapter 1A of the General Statutes and Chapters 50, 50A, 52B and 52C of the General Statutes apply. The court may execute the request within its competence and according to its rules on discovery and evidence and may impose sanctions for failure to comply with its orders.
- e. **Witness Compensation.** A subpoena may be issued as provided by N.C.G.S. § 8-59, in which case the witness compensation provisions of N.C.G.S. §§ 6-51, 6-53 and 7A-314 shall apply.

15. Arbitration in the Absence of a Party or Counsel for a Party. Unless the law provides to the contrary, the arbitration may proceed in the absence of a party or counsel who, after due notice, fails to be present or fails to obtain a postponement. An award shall not

be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

16. Evidence and Procedure.

- a. Relevant and Material Evidence.** The parties may offer such evidence as is relevant and material to the dispute and shall produce evidence that the arbitrator deems necessary to an understanding and determination of the dispute.
- b. Subpoena Procedure.** The arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon a party's request or independently.
- c. Determination of Relevance and Materiality.** The arbitrator shall be the judge of the relevance and materiality of evidence offered.
- d. Rules of Evidence and of Civil Procedure.** The rules of evidence and civil procedure shall be general guides in conducting the hearing. The arbitrator has the discretion to waive or modify these rules to permit efficient and expeditious presentation of the case. The rules of privilege shall apply as in civil actions.
- e. Evidence in Open Proceeding.** Evidence shall be taken in the presence of all arbitrator and all parties, except where a party is absent in default or has waived the right to be present.

17. Evidence by Affidavits, Post-Hearing Filing of Documents or Other Evidence.

- a. Affidavits.** The arbitrator may receive and consider evidence of witnesses by affidavit but shall give this evidence only such weight as the arbitrator deems it entitled after considering objections to its admission.
- b. Documents Produced Subsequent to Hearing.** If the parties agree or the arbitrator directs that documents or other evidence be submitted to him after the hearing, the documents or other evidence shall be filed with him. All parties shall be afforded an opportunity to examine such documents or other evidence.

18. Inspection or Investigation. If the arbitrator finds it necessary to make an inspection or investigation in connection with the arbitration, he shall advise the parties. The arbitrator shall set the date, time and place and shall notify the parties. Any party desiring to do so may be present at such an inspection or investigation. If one or all parties are not present at the inspection or investigation, the arbitrator shall make a written report to the parties unless the parties agree otherwise and afford them an opportunity to comment.

19. Closing of Hearing.

- a. Further Proofs Inquiry.** The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer, witnesses to be heard, or whether

they wish to be heard in final argument. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.

- b. Briefs.** If briefs are to be filed, the hearing will be declared closed as of the final date the arbitrator sets for receipt of briefs. If documents are to be filed as provided above (“Evidence by Affidavits...”) and the date set for their receipt is later than that set for receipt of briefs, the later date shall be the date of closing the hearing.
 - c. Running of Time Limit for Award.** The time limit within which the arbitrator must make the award shall begin to run upon the closing of the hearing.
- 20. Reopening Hearing.** The hearing may be reopened on the arbitrator’s initiative, or upon any party’s application, at any time before the award is made. The arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.
- 21. Waiver of Oral Hearing.** The parties may agree in writing to waive oral hearings.
- 22. Waiver of Rules.** A party who proceeds with the arbitration after knowledge that a provision or requirement of this agreement has not been complied with and who fails to object in writing shall be deemed to have waived the right to object. A timely objection must be filed with the arbitrator with a copy sent to other party.
- 23. Extensions of Time.** The parties may modify any period of time by mutual agreement. The arbitrator may for good cause extend any period of time established by this consent stipulation, except the time for making the award. The arbitrator shall notify parties of any extension.
- 24. Serving Notice.**
 - a. Mail or Personal Service.** The parties shall be deemed to have consented that any papers, notices or processes necessary or proper for initiation or continuation of an arbitration under this agreement; for any court action in connection therewith; or for entry of judgment on any award made under this agreement may be served on a party by mail addressed to the party or the party’s counsel at the last known address or by personal service in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.
 - b. Electronic Communications.** The arbitrator and the parties may also use facsimile transmission, telex, telegram, electronic communication (email), or other written forms of electronic communication to give notices permitted or required by this agreement.

25. **Time of Award.** The arbitrator shall make the award promptly and no later than 30 days from the date of closing the hearing.

26. **Form and Scope of Award.**

a. **Contents of Award.** The award shall be in writing and dated and shall be signed by the arbitrator with a statement of the place where the arbitration was conducted and where the award was made. It shall be executed in the manner required by law.

b. **Remedies.** The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the parties' agreement, including, but not limited to, specific performance.

27. **Award, Costs.**

a. **Delivery of Award.** The arbitrator shall deliver a copy of the award to each party's counsel or directly to each party if he or she is without counsel or by registered or certified mail, return receipt requested. Time of delivery shall be computed from the date of personal delivery or date of mailing.

b. **Findings of Fact and Conclusions of Law.** The award shall state the reasons upon which it is based and shall enter findings of fact and conclusions of law.

c. **Interest.** The arbitrator may award interest as provided by law.

d. **Costs.**

i. Awarding of costs of an arbitration shall be in the arbitrator's discretion.

ii. In making an award of costs, the arbitrator may include any or all of the following as costs:

- (1) Fees and expenses of the arbitrator and expert witnesses;
- (2) Fees and expenses of counsel;
- (3) Any other expenses incurred in connection with the arbitration proceedings;
- (4) Sanctions awarded by the arbitrators or the court, including those provided by Rules 11 and 37 of the North Carolina Rules of Civil Procedure; and
- (5) Costs allowed by N.C.G.S. Chapters 6 and 7A.

iii. In making an award of costs, the arbitrators shall specify each of the following:

- (1) The party entitled to costs;
- (2) The party who shall pay costs;
- (3) The amount of costs or method of determining that amount; and

(4) The manner in which costs shall be paid.

- e. **Time Limits.** The award shall be made within the time the court orders on a party's application. The parties may extend the time in writing either before or after the expiration of this time. A party waives objection that an award was not made within the time required unless that party notifies the arbitrators of his or her objection prior to delivery of the award to that party.
28. **Judicial Review and Appeal.** No judicial review of errors of law in the award is permitted.
29. **Award upon Settlement.** If the parties settle their dispute during the arbitration, the arbitrator shall set forth the agreed settlement terms in an award, termed a consent award.
30. **Delivery of Award to Parties.** The parties shall accept the placing of the award or a true copy of the award in first-class mail and addressed to a party or a party's counsel at the party's or counsel's last known address, personal service of the award, or filing of the award in any other manner permitted by law as legal and timely delivery.
31. **Release of Documents for Judicial Proceedings.** The arbitrator shall upon a party's written request furnish to the party at the party's expense certified copies of any papers in the arbitrator's possession that may be required in judicial proceedings relating to the arbitration.
32. **Applications to Court; Exclusion of Liability.**
- a. **No Waiver.** No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
 - b. **Arbitrator Not a Party.** The arbitrator of an arbitration institution in a proceeding under this agreement is not a necessary party in judicial proceedings relating to the arbitration.
 - c. **Judgment on Award.** Parties to proceedings conducted pursuant to this agreement shall be deemed to have consented that the judgment upon the arbitration award may be entered in any court having jurisdiction.
 - d. **Arbitrator Immunity.** The arbitrator shall be entitled to immunity as provided by law.
33. **Expenses.** Expenses of witnesses shall be paid by the party producing such witnesses. The parties shall bear equally all other expenses of the arbitration, including required travel and other expenses of the arbitrator (if provided in the arbitrator's fee agreement with the parties) and of any witness and the cost of any proof produced at the arbitrator's direct request, or the arbitrator assesses these expenses or any part of them against a

specified party or parties. To the extent provided by law, fees and expenses of legal counsel shall be included among costs of the arbitration.

34. **Deposits.** The arbitrator may require the parties to deposit, in advance of any hearing, such sums of money as the arbitrator deems necessary to cover expenses of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the close of the case. If such advance deposits are to be made, provision shall be made in the arbitrator's fee agreement with the parties.
35. **Interpretation and Application of Rules.** The arbitrator shall interpret and apply the provisions of this agreement.
36. **Time.** Time periods prescribed under this agreement or by the arbitrator shall be computed in accordance with the North Carolina Rules of Civil Procedure and North Carolina law.
37. **Experts.**
 - a. **Appointment of Expert by Arbitrator.** The arbitrator may appoint one or more independent experts to report in writing to the arbitrator on specific issues designated by the arbitrator and communicated to the parties.
 - b. **Information to Expert.** The parties shall provide the expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. A dispute between a party and the expert as to relevance of the requested information or goods shall be referred to the arbitrator for decision.
 - c. **Dissemination of Report of Expert.** Upon receipt of an expert's report, the arbitrator shall send a copy to all parties and shall give the parties an opportunity to express their opinions on the report in writing. A party may examine any document in order to express his/her opinion on the report in writing. A party may examine any document upon which the expert relied in the report.
 - d. **Examination of Expert.** At any party's request, the arbitrator shall give the parties an opportunity to question the expert at a hearing. Parties may present expert witnesses to testify on the points at issue during this hearing.
38. **Arbitration Award.** The parties shall faithfully abide by and perform any arbitration award.
39. **Severability.** In the event any of the provisions of this agreement are deemed to be invalid or unenforceable, the same shall be severed from the remainder of this agreement and shall not cause invalidity or unenforceability of the remainder of this agreement. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

IN WITNESS WHEREOF, the parties hereunto affix their respective hands and seals of the date subscribed on the first page of this agreement.

_____ (Seal)

_____ (Seal)